

ORIGINAL

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FILED  
U.S. DISTRICT COURT  
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S.D. OF N.Y.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA, :

Plaintiff, :

- v. - :

JOSE SAMUEL LEONARDO OSBORN, :

Defendant. :

JUDGE ROBINSON

COMPLAINT

**08 CV 2053**

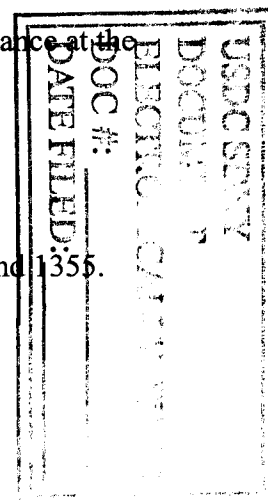
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Plaintiff United States of America (the "United States"), by its attorney, Michael  
J. Garcia, United States Attorney for the Southern District of New York, for its complaint,  
alleges upon information and belief as follows:

NATURE OF ACTION

1. This is an action to recover money due and owing the United States by  
defendant Jose Samuel Leonardo Osborn for educational costs related to his attendance at the  
U.S. Military Academy, West Point.

JURISDICTION AND VENUE

2. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1345 and 1355.



3. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391(b).

THE PARTIES

4. Plaintiff United States is a sovereign and body politic.

5. Defendant Jose Samuel Leonardo Osborn (the “defendant”) resides at 18C Chelsea Ridge Drive, Wappingers Falls, New York 12590.

FACTUAL ALLEGATIONS AND CLAIM FOR RELIEF

6. On July 11, 1996, the defendant was appointed a cadet of the United States Military Academy. A true and correct copy of his Oath of Allegiance and Agreement to Serve is attached hereto as Exhibit A and incorporated herein.

7. The agreement provided, inter alia, that the defendant must complete an eight-year military service commitment and, if he should fail to complete the service commitment, he shall reimburse the United States for the educational costs expended on his behalf.

8. On or about April 11, 2001, the defendant was discharged from the United States Military Academy.

9. On September 20, 2002, the defendant executed a promissory note (the “note”), and agreed to pay the United States the principal amount of \$99,085.00, with interest accruing at the rate of 3.66 percent per annum. The defendant further agreed to make monthly payments of \$987.30, commencing immediately.

10. A true and correct copy of the promissary note is attached hereto as Exhibit B and incorporated herein.

11. By letter dated March 23, 2007, the Defense Finance and Accounting Service informed the defendant that they had not received a payment or reply to their previous letters regarding his \$99,085.00 debt, and request that he immediately contact them to arrange for payment of the debt. A true and correct copy of the demand letter is attached hereto as Exhibit C and incorporated herein.

12. The defendant has failed to make any payments pursuant to terms of the note and is in default.

13. As of May 15, 2007, the defendant is indebted to the United States in the total amount of \$123,023.30. This includes principal in the amount of \$99,085.00, plus interest in the amount of \$11,727.10, and penalties pursuant to 31 C.F.R. Part 901.9 in the amount of \$12,196.20 and \$15.00 in administrative charges. Despite due demand, defendant has failed to pay the amount demanded. A certificate of indebtedness from the Defense Finance and Accounting Service is attached hereto as Exhibit D and incorporated herein.

WHEREFORE, plaintiff United States demands judgment against defendant in the amount of \$123,023.30, with interest accruing at the rate of 3.66 percent per annum from May 15, 2007, until the date of judgment, and with interest from the date of judgment at the legal rate until paid in full, plus costs and disbursements and such other or further relief as this Court deems proper.

Dated: New York, New York  
February 28, 2008

Respectfully Submitted,

MICHAEL J. GARCIA  
United States Attorney for the  
Southern District of New York  
Attorney for the United States  
of America

By: 

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**EXHIBIT A**

I. Oath of Allegiance

I, JOSE SAMUEL LEONARDO OSBORN do solemnly swear that I will support the Constitution of the United States, and bear true allegiance to the National Government; that I will maintain and defend the sovereignty of the United States, paramount to any and all allegiance, sovereignty, or fealty I may owe to any State or Country whatsoever; and that I will at all times obey the legal orders of my superior officers, and the Uniform Code of Military Justice.

II. Agreement to Serve

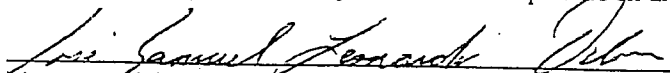
I, having been appointed a cadet of the United States Military Academy, do hereby agree, with the consent of my parents or guardian if I am a minor:

- a. To complete the course of instruction at the United States Military Academy;
- b. If tendered an appointment as a commissioned officer in one of the armed services upon graduation from the United States Military Academy, to accept such appointment and to serve under such appointment on active duty for not less than five consecutive years immediately after such appointment: if my initial appointment hereunder is in a Reserve Component, to accept a commission in a Regular Component if subsequently tendered during the five consecutive years immediately after my initial appointment, and to serve on active duty for the remainder of such period under such appointment.
- c. If I am permitted to resign my commission in a Regular Component of one of the Armed Services prior to the eighth anniversary of my graduation, to accept an appointment as a commissioned officer in a Reserve Component of one of the Armed Services and remain therein until such eighth anniversary.
- d. To serve a total of eight (8) years from graduation from the United States Military Academy. Any part of that service not completed on active duty must be served in a Reserve Component (not on active duty), unless I am discharged from the Reserve Component by proper military authority.
- e. That if I fail to complete the course of instruction of the United States Military Academy or decline to accept an appointment as a commissioned officer, I will serve on active duty as specified in paragraphs 1.b. through 1.g., which are contained in the Statement of Policies on the next page;
- f. That if I voluntarily fail, or because of misconduct fail, to complete the period of active duty specified in paragraphs IIb, c, d or e above, I will reimburse the United States in an amount that bears the same ratio to the total cost of advanced education provided me as the unserved portion of active duty bears to the total period of active duty I have agreed to serve;
- g. Further, that if I am separated from the United States Military Academy for breach of contract, as defined in paragraph 1.g. (3), Statement of Policies on the next page, and the Army decides that I should not be ordered to active duty at all because such service would not be in the best interests of the Army, I shall be considered to have either voluntarily or because of misconduct failed to complete the period of active duty and may be required to reimburse the United States as described above;
- h. For the purpose of this paragraph:
  - (1) The term "voluntarily fail" includes, but is not limited to, failure to complete the period of active duty because of conscientious objection, because of resignation from the United States Military Academy or United States Army, and marriage while a cadet.
  - (2) The term "because of misconduct" includes, but is not limited to, termination by the United States Army of my service because of homosexual conduct, criminal conduct, conduct violating the Cadet Honor Code, conduct deficiency under the Cadet Disciplinary System, conduct violating regulations for the discipline of the Corps of Cadets.
  - (3) The term "course of instruction" is synonymous with the term "educational requirements" as the term is used in 10 USC 2005.

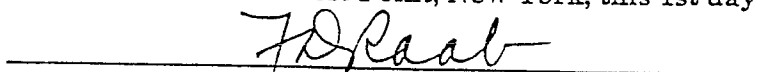
III. Marital Status

I am unmarried, do not presently have custody of a child, and have no court-ordered child support obligation. Furthermore, I understand that a cadet who marries, has custody of a child, or is ordered by a court of competent jurisdiction to provide child support prior to graduation will be separated from the United States Military Academy.

My signature constitutes the taking of the Oath of Allegiance, execution of the agreement to serve, my affirmation as to my marital status, the absence of child custody or a court-ordered child support obligation and my acknowledgement that I have read, understand, and agree to abide by the statement of policies on the next page.

  
sign your full name as it appears in paragraph I above)

Sworn to and subscribed before me at West Point, New York, this 1st day of July, nineteen hundred and ninety-six.



F. Dean Raab CPT, JA

**EXHIBIT B**

**Promissory Note to Pay in Installments**

For value received, I promise to pay the United States the principal amount of \$99,085.00, with simple interest at the rate of 3.66 percent per annum. Payments of \$987.30 are to be made in monthly installments to commence immediately, and to continue every month thereafter until the entire debt, including interest, administrative charges, and any late payment penalties, as defined below, are paid-in-full. Since installment payments are to be of sufficient size (minimum \$50) in order to liquidate the debt within three years (ten years if an education debt), the monthly amount will increase if the account is suspended as defined in the following paragraph.

I understand I may apply for suspension or reduction of payments based on college enrollment or financial hardship. I am aware that interest will continue to accrue on the unpaid principal even while the account is in suspense. I understand that certification of school enrollment and a Department of Justice Financial Status Form are required annually.

I will make payment by check or money order payable to DFAS-DE. I will send each payment to DFAS-DE, P O Box 955445, St. Louis MO 63195-5445, unless the United States notifies me to make payments to another place.

I understand that the United States will credit each payment in the following order: first, to outstanding penalties and administrative charges; second, to accrued and unpaid interest; and third, to the principal balance I owe. I understand that I may prepay the entire debt or any part thereof without penalty.

I further understand that if I do not make a payment within 30 days after the date I am sent a monthly statement, the United States will consider me to be in default. If that happens, I understand that the United States will have the option of declaring my entire debt, including unpaid principal, interest, administrative charges, and penalties, to be immediately payable in one lump sum without further notice or demand upon me. Furthermore, in that event, the United States may exercise any collections options legally available, including administrative offset of federal tax refunds or funds received from other government agencies, referring the debt to commercial collection agencies, filing adverse credit reports, or referral of the account for legal action.

I understand that administrative charges in the amount of \$15.00 per instance may be assessed to cover the cost incurred in handling and processing past due amounts. I understand that the United States can charge me a penalty fee of not more than 6 percent per annum on any amount which is more than 90 days past due.

I agree that the provisions of this note may not be changed except upon a written agreement between myself and an authorized representative of the United States, and that such agreement will be in the form of a new promissory note to replace the one I am signing today.

I certify that I have read and understand the terms of this note.

Signature

Date

JOSE S L OSBORN

Printed Name

Address

DO NOT WRITE BELOW THESE LINES

As an authorized representative of the United States, I hereby accept the installment agreement set forth above.

COUNTERSIGNED:

Representative Signature

Printed Name

Title/Agency

Date signed: \_\_\_\_\_



**EXHIBIT C**



JOSE SAMUEL OSBORN  
1079 MAGGIE ROAD  
NEWBURGH NY 12550

March 23, 2007

Dear Mr. Osborn:

We have not received a payment or reply to our letters regarding Account Number on your debt of \$99,085.00 (principal amount). In the event you are not aware of the reason for this debt, the information is enclosed for your review.

**Be advised that your debt account will be referred to the Department of Justice, U.S. Attorney, for enforced collection action without further notice to you.**

We reported your account to commercial credit bureaus as a collection account. This action will limit your ability to receive credit in the future. We have also reported your account to the Internal Revenue Service (IRS) for garnishment of future tax refunds due you.

It is in your best interest not to avoid or dismiss your responsibility to repay this debt. To avoid further enforced collection, please contact us today for arrangements on repaying this debt.

You may contact a customer service representative Monday - Thursday 7:00 a.m. - 4:00 p.m. and Friday 6:30 a.m. - 3:00 p.m. Mountain Time at 1-800-962-0648, or write to DFAS-JEDC/DE, 6760 E Irvington Pl., Denver CO 80279-7500. Our fax number is (303) 676-5607, Attention: JEDC. For additional information or to contact us by email you may visit our website at [www.dod.mil/dfas/militarypay/debt](http://www.dod.mil/dfas/militarypay/debt). Please include your name and account number on all correspondence.

Sincerely,

151  
David Feltner  
Customer Service Representative  
Directorate of Debt and Claims  
Management

Enclosures

**EXHIBIT D**

CERTIFICATE OF INDEBTEDNESS

JOSE SAMUEL LEONARDO OSBORN  
1079 MAGGIE ROAD  
NEWBURGH NY 12550

Total debt due United States as of May 15, 2007: \$123,023.30.

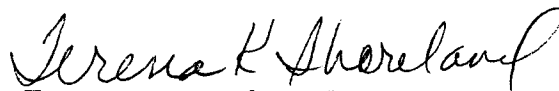
I certify that Defense Finance and Accounting Service records show that the debtor named above is indebted to the United States in the amount stated above, which includes cumulative interest through, May 15, 2007, at the annual rate of 3.66%. The information contained in the Certificate of Indebtedness was obtained from the Department of the Army, United States Military Academy, West Point, and the undersigned has custody of this and its related documents.

The claim arose in connection with a debt from the United States Army, for tuition upon discharge from West Point Military Academy. Based on the signed Oath of Allegiance, Mr. Osborn incurred an eight-year military service commitment. Failure to serve in the military resulted in a breach of contract. The authority for collection is the Oath of Allegiance and Title 10, United States Code, Section 2005.

Mr. Osborn's account was initially referred to the Treasury Offset Program (TOP) November 16, 2002, for potential offset of his Internal Revenue Service (IRS) tax refunds. Two payments were received totaling \$2,316.80 and credited as follows: \$1,936.80 was applied towards interest charges, \$15.00 was applied towards administrative charges and \$365.00 was applied to penalty charges. The account was referred to the first Private Collection Agency (PCA) October 12, 2003 and returned from the PCA December 8, 2003, with no payments being received. The account was referred to the second PCA on January 4, 2004 and returned February 4, 2004, with no payments being received. The current balance due is \$123,023.30 of which \$99,085.00 is principal, \$11,727.10 is interest and \$12,196.20 is penalty charges and \$15.00 is administrative charges.

CERTIFICATION: Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true and correct.

May 15, 2007



Teressa K. Shoreland  
Supervisor, Customer Service Section  
Directorate of Debt and Claims  
Management